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ATTORNEY FOR APPELLANT:

**WILLIAM BYER, JR.**

Byer & Byer  
Anderson, Indiana

ATTORNEYS FOR APPELLEE:

**STEVE CARTER**

Attorney General of Indiana

**MONIKA PREKOPA TALBOT**

Deputy Attorney General

Indianapolis, Indiana

**IN THE  
COURT OF APPEALS OF INDIANA**

MICHAEL WILLIAM STARK,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 48A04-0607-CR-397

APPEAL FROM THE MADISON COUNTY COURT

The Honorable David W. Hopper, Judge

Cause No. 48E01-0311-FD-415

**May 10, 2007**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SHARPNACK, Judge**

Michael William Stark appeals his six-year sentence for operating a vehicle while intoxicated (“OVWI”) as a class D felony<sup>1</sup> and for being an habitual substance offender.<sup>2</sup> Stark raises one issue on appeal, which we revise and restate as whether Stark’s sentence is inappropriate in light of the nature of the offense and the character of the offender. We affirm.

The relevant facts follow. On November 9, 2003, an Alexandria police officer observed Stark’s vehicle speeding and swerving across the center line of State Road 9. The officer pulled Stark over. As the officer spoke with Stark, he could smell the odor of alcohol, and he noticed that Stark’s speech was slurred. After failing a breathalyzer test, failing to complete the horizontal gaze nystagmus test, and refusing to take another field sobriety test, Stark was arrested. Upon an inventory of Stark’s vehicle, police found what was determined to be marijuana.

The State charged Stark with Count I, OVWI endangering a person as a class A misdemeanor;<sup>3</sup> Count II, possession of marijuana as a class A misdemeanor;<sup>4</sup> and Count III, OVWI as a class D felony. The State later amended the information and added Count IV, charging Stark as an habitual substance abuser. Following a bench trial, the trial court found Stark guilty of Counts I, III, and IV.

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<sup>1</sup> Ind. Code § 9-30-5-3 (2004).

<sup>2</sup> Ind. Code § 35-50-2-10 (2004).

<sup>3</sup> Ind. Code § 9-30-5-2(A) (2004).

<sup>4</sup> Ind. Code § 35-48-4-11(1) (2004).

At sentencing, the trial court noted that this was Stark's sixth OVWI conviction. In addition, Stark admitted that he had committed a subsequent offense, criminal conversion, following his arrest for the present offense, that this was his third felony conviction, and that his prior probation was revoked because he had committed another crime. Thus, the trial court vacated Stark's conviction on Count I because it merged with Count III and sentenced Stark to three years on Count III. The trial court enhanced Stark's sentence by three years for the habitual substance abuser finding. The trial court sentenced Stark to an aggregate sentence of six years. The trial court stated that it would review Stark's case in order to consider his request for community corrections after he served four years of the imposed sentence.

The issue is whether Stark's sentence is inappropriate in light of his character and the nature of the offense. Ind. Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." "Although appellate review of sentences must give due consideration to the trial court's sentence because of the special expertise of the trial bench in making sentencing decisions, Appellate Rule 7(B) is an authorization to revise sentences when certain broad conditions are satisfied." Patterson v. State, 846 N.E.2d 723, 731 (Ind. Ct. App. 2006) (citing Purvis v. State, 829 N.E.2d 572, 587 (Ind. Ct. App. 2005), trans. denied).

Our review of the nature of the offense reveals that, while under the influence of alcohol, Stark endangered his life as well as the lives of others by driving his vehicle at a

high rate of speed and repeatedly driving over the centerline of traffic on State Road 9. At one point, prior to being stopped by police, Stark's vehicle "went completely into the left lane of the road." Appellant's Appendix at 19. The officer smelled alcohol on Stark's breath, and Stark's speech was slurred. In addition, Stark had difficulty taking his driver's license out of his pocket and stumbled when the officer instructed him to exit his vehicle.

Our review of Stark's character reveals that the present offense is Stark's sixth OVWI conviction. At trial, Stark admitted that he committed a subsequent offense of criminal conversion after his arrest for the present offense. Also, Stark admitted that this was his third felony conviction and that his prior probation was revoked because he committed another crime. At trial, Stark presented evidence that he had been employed for the past eighteen months with the same employer, that he had been an exemplary and responsible employee, and that he had maintained his sobriety since this offense occurred in November of 2003 by completing a twelve-step program through Alcoholics Anonymous and participating in Sober Life Alternatives. However, we agree with the State that Stark's alleged rehabilitation does not change the fact that this is Stark's sixth OVWI offense and his third felony offense.<sup>5</sup> We conclude that Stark's sentence is not inappropriate in light of his character and the nature of his offense.

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<sup>5</sup> Stark argues that the Indiana Supreme Court's holding in Neale v. State, 826 N.E.2d 635, 639 (Ind. 2005) supports his argument that the trial court's aggregate sentence of six years is not justified. We disagree.

The Court held that the defendant's extensive criminal history, consisting of mostly alcohol-related misdemeanors, did not justify the trial court's imposition of the maximum sentence where the

For the foregoing reasons, we affirm Stark's sentence for operating a vehicle while intoxicated as a class D felony and for being an habitual substance offender.

Affirmed.

ROBB, J. and CRONE, J. concur

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defendant was convicted of class B child molesting. Id. at 638. The Court stated that the alcohol-related offenses were "manifestly different in nature and gravity" from the child molesting charge. Id.

This case is distinguishable from Neale. Here, Stark's prior offenses were of the same nature and gravity as the presently charged offense. Prior to the present offense of OVWI, Stark had been convicted five times for OVWI. The significance of prior convictions "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." Id. (quoting Ruiz v. State, 818 N.E.2d 927, 929 (Ind. 2004)). Here, Stark's present offense was a continuation of the prior alcohol-related offenses and, therefore, are significant.